

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

MFA.No. 838 of 1998(A)

**W.C.C.NO.25/1994 IN THE COURT OF THE COMMISSIONER FOR WORKMEN'S
COMPENSATION, ERNAKULAM.**
.....

APPELLANT/ 2ND OPPOSITE PARTY:

**THE NEW INDIA ASSURANCE CO. LTD., NOW REPRESENTED BY
ITS DEPUTY MANAGER, REGIONAL OFFICE,
M.G. ROAD, KOCHI-11.**

BY ADV. SRI.MATHEWS JACOB (SR.).

RESPONDENTS/APPLICANTS AND 1ST OPPOSITE PARTY:

- 1. R. RAMAYI, M/O. LATE PALANISWAMI, C/O. NABEESA,
KAZHARICKAL VEEDU, VATHURUTHY,
COCHIN -29.**
- 2. LAKSHMI, W/O. LATE PALANISWAMI, -DO- -DO-.**
- 3. BOMMAKKA, S/O. LATE PALANISWAMI, -DO- -DO-.**
- 4. K.G. THOMAS, CONTACTOR, KARUKAPARAMBIL HOUSE,
PONATH TEMPLE ROAD, CHILAVANNOOR, COCHIN -20.**

**BY ADV. SRI.A.V.THOMAS FOR R4,
SRI.K.T.THOMAS,
SRI. SUDHEESH FOR R1 TO R3,**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P. NO. 3348/1998 IN M.F.A. NO. 838/1998

DISMISSED

SD/ J.B.KOSHY, JUDGE.

04/06/2007.

SD/- K.P.BALACHANDRAN, JUDGE.

//TRUE COPY//

prv.

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 838 of 1998

Dated this the 12th day of June, 2007

Judgment

Koshy, J.

A construction worker employed with the first opposite party met with an accident on 4.4.1992 in the course of employment and died. He was engaged as a helper. His dependent filed an application for compensation before the Commissioner for Workmen's Compensation under the Workmen's Compensation Act (for short 'the Act'). It was contended by the insurance company that though the establishment of the first opposite party was a covered establishment, the deceased was not a worker as his name was not in the muster roll. That contention was not accepted by the commissioner and found on the basis of evidence that he was a worker during the relevant time. It is a finding of fact based on evidence.

2. Now, two contentions are raised by the appellant insurance company. First contention is whether he is a worker covered under the Act or not and, secondly, whether calculation of compensation made is

correct. Notice to the respondent Nos.1 to 3 is not served so far. Therefore, notice was served through the advocate who was appearing for the claimant before the Commissioner for Workmen's Compensation. Sri.Sudheesh, advocate, who filed vakalath for R1 to R3 (claimants) before the Commissioner was present and argued the case for them. The answer to the question whether the deceased was a workman or not is based on finding of fact. So long as the establishment is covered and he sustained injuries during the course of employment, we are of the view that this contention is not tenable. In any event, the only contention pressed before us is regarding the calculation of compensation. According to the claimants, deceased was getting Rs.1,500/- per month. The commissioner found that he was getting Rs.1,260/- per month and calculated compensation on the basis of the amended Act. The Apex Court in Valsala v. KSEB (AIR 1999 SC 3502) held that compensation under the Workmen's Compensation Act has to be calculated on the basis of the provisions in the Act applicable on the date of accident. If that be so, maximum wages that can be taken into account is Rs.1000/-and compensation has to be calculated

as Rs.1000 x 40 x 216.91 = Rs.86,764/-. There is no

100

dispute regarding the relevant factor. Therefore, compensation payable will be only Rs.86,764/- with 12% interest as directed by the tribunal as, admittedly, the award was passed and the amount was deposited after the amendment. Therefore, excess amount of Rs.49,889/- deposited should be refunded to the appellant and the amount due to the claimants should be paid accordingly.

Appeal allowed partly.

J . B . KOSHY
JUDGE

K . P . BALACHANDRAN
JUDGE

vaa

**J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.**

M.F.A.NO.838/98

JUDGMENT

Dated:4th June, 2007